

AMENDED IN SENATE APRIL 26, 2005

**SENATE BILL**

**No. 296**

---

**Introduced by Senator Campbell**

February 16, 2005

---

~~An act to repeal and add Part 3 (commencing with Section 21300) of Division 11 of the Probate Code, relating to no-contest clauses. An act to amend Section 16350 of the Probate Code, relating to trusts.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 296, as amended, Campbell. ~~No-contest clauses~~ *Trusts*.

*Existing law generally requires a trustee to allocate money received from an entity, to income. However, existing law requires a trustee to allocate money received in total or partial liquidation of an entity to principal. Existing law also provides that money is received in partial liquidation if the total amount of money and property received in a distribution or series of related distributions is greater than 20% of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.*

*This bill would revise the latter provision to specify that money is received in partial liquidation if the total amount of money and property received by all owners, collectively, in a distribution or series of related distributions is greater than 20% of the entity's gross assets, as determined in the manner described above. The bill would also provide that if that receipt is allocated between December 2, 2004 and January 1, 2006, a trustee shall not be liable for allocating the receipt to income if the amount received by the trustee, when considered together with the amount received by all owners, collectively, exceeds 20% of the entity's gross assets, but the amount received by the trustee does not exceed 20% does not exceed 20% of the entity's assets.*

~~Existing law establishes the procedures by which a person may apply to the court for a determination of whether specified actions would constitute contests within the terms of a no contest clause in an instrument.~~

~~This bill would repeal existing provisions of law relating to no contest clauses. The bill would instead provide that a provision in an instrument reseinding a donative transfer or otherwise penalizing a person for initiating, responding to, or otherwise participating in any legal proceeding, as described, is unenforceable, except as specified. The bill would enable a court to award attorney's fees and costs against the prevailing party if certain conditions are satisfied. The bill would apply to all persons dying after the operative date of January 1, 2007, and to all instruments that become irrevocable after that operative date.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     *SECTION 1. Section 16350 of the Probate Code is amended*
- 2     *to read:*
- 3     16350. (a) For the purposes of this section, "entity" means a
- 4     corporation, partnership, limited liability company, regulated
- 5     investment company, real estate investment trust, common trust
- 6     fund, or any other organization in which a trustee has an interest
- 7     other than a trust or decedent's estate to which Section 16351
- 8     applies, a business or activity to which Section 16352 applies, or
- 9     an asset-backed security to which Section 16367 applies.
- 10    (b) Except as otherwise provided in this section, a trustee shall
- 11    allocate to income money received from an entity.
- 12    (c) A trustee shall allocate to principal the following receipts
- 13    from an entity:
- 14    (1) Property other than money.
- 15    (2) Money received in one distribution or a series of related
- 16    distributions in exchange for part or all of a trust's interest in the
- 17    entity.
- 18    (3) Money received in total or partial liquidation of the entity.
- 19    (4) Money received from an entity that is a regulated
- 20    investment company or a real estate investment trust if the

1 money distributed is a capital gain dividend for federal income  
2 tax purposes.

3 (d) For purposes of paragraph (3) of subdivision (c):

4 (1) Money is received in partial liquidation (A) to the extent  
5 that the entity, at or near the time of a distribution, indicates that  
6 it is a distribution in partial liquidation, or (B) if the total amount  
7 of money and property received *by all owners, collectively*, in a  
8 distribution or series of related distributions is greater than 20  
9 percent of the entity's gross assets, as shown by the entity's  
10 yearend financial statements immediately preceding the initial  
11 receipt. *If that receipt is allocated between December 2, 2004*  
12 *and January 1, 2006, a trustee shall not be liable for allocating*  
13 *the receipt to income if the amount received by the trustee, when*  
14 *considered together with the amount received by all owners,*  
15 *collectively, exceeds 20 percent of the entity's gross assets, but*  
16 *the amount received by the trustee does not exceed 20 percent of*  
17 *the entity's gross assets.*

18 (2) Money is not received in partial liquidation, nor may it be  
19 taken into account under clause (B) of paragraph (1), to the  
20 extent that it does not exceed the amount of income tax that a  
21 trustee or beneficiary is required to pay on taxable income of the  
22 entity that distributes the money.

23 (e) A trustee may rely on a statement made by an entity about  
24 the source or character of a distribution if the statement is made  
25 at or near the time of distribution by the entity's board of  
26 directors or other person or group of persons authorized to  
27 exercise powers to pay money or transfer property comparable to  
28 those of a corporation's board of directors.

29 ~~SECTION 1. Section 21309 is added to the Probate Code, to~~  
30 ~~read:~~

31 ~~21309. This part shall remain in effect only until January 1,~~  
32 ~~2007, and as of that date is repealed, unless a later enacted~~  
33 ~~statute, which is enacted before January 1, 2007, deletes or~~  
34 ~~extends that date.~~

35 ~~SEC. 2. Part 3 (commencing with Section 21300) is added to~~  
36 ~~Division 11 of the Probate Code, to read:~~

1           PART 3. ~~NO CONTEST CLAUSES AND OTHER~~  
2                       ~~FORFEITURES NOT ENFORCED~~

3  
4       21300. ~~A provision in an instrument rescinding a donative~~  
5 ~~transfer or otherwise penalizing a person for initiating,~~  
6 ~~responding to, or otherwise participating in any legal proceeding,~~  
7 ~~including filing a creditor's claim, whether in a court of law, a~~  
8 ~~mediation, arbitration, administrative hearing, or otherwise, is~~  
9 ~~unenforceable. Nothing within this section is intended to prohibit~~  
10 ~~conditional gifts under an instrument, except as provided in this~~  
11 ~~part.~~

12       21301. ~~Regardless of whether the instrument contains a~~  
13 ~~provision described in Section 21300, a court may award~~  
14 ~~reasonable attorney's fees and costs against the unsuccessful~~  
15 ~~party and in favor of the prevailing party if both of the following~~  
16 ~~apply:~~

17       ~~(a) The proceeding in question involves the alleged invalidity~~  
18 ~~of an instrument or one or more of its terms based on one or~~  
19 ~~more of the following grounds:~~

20       ~~(1) Revocation.~~

21       ~~(2) Lack of capacity.~~

22       ~~(3) Fraud.~~

23       ~~(4) Misrepresentation.~~

24       ~~(5) Menace.~~

25       ~~(6) Duress.~~

26       ~~(7) Undue influence.~~

27       ~~(8) Mistake.~~

28       ~~(9) Lack of due execution.~~

29       ~~(10) Forgery.~~

30       ~~(b) The court determines that the unsuccessful party asserted~~  
31 ~~or opposed one or more of the grounds set forth in subdivision~~  
32 ~~(a) without reasonable cause.~~

33       21302. ~~For purposes of this part, "reasonable cause" means~~  
34 ~~that the unsuccessful party has knowledge of acts that would~~  
35 ~~cause a reasonable person to believe that the factual allegations~~  
36 ~~and other contentions made by that party and filed with the court~~  
37 ~~may be proven or, if specifically so identified, are likely to be~~  
38 ~~proven after a reasonable opportunity for further investigation or~~  
39 ~~discovery.~~

- 1     ~~21303. This part applies to all instruments, whenever~~
- 2     ~~executed, of persons dying on or after the operative date of this~~
- 3     ~~part and to instruments that become irrevocable on or after that~~
- 4     ~~operative date.~~
- 5     ~~21304. This part shall become operative on January 1, 2007.~~

O